



MONTANA LEGISLATIVE BRANCH

Legislative Fiscal Division

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DATE: December 5, 2001

TO: Legislative Finance Committee

FROM: Lois Steinbeck
Pat Gervais

RE: Summary of HJR 1 Meeting November 27 and 28 and Department of Public Health and Human Services October Budget Projections

This memorandum summarizes the November 27 and 28 meeting of the subcommittee of Legislative Finance Committee that is studying public mental health services, the October 2001 budget status report prepared by the Department of Public Health and Human Services (DPHHS), and a preliminary review of potential reductions being considered by the executive branch to reduce the projected general fund shortfall.

NOVEMBER 27 AND 28 MEETING

Several members of the HJR 1 committee studying public mental health services met with two community service mental health providers on November 27. The committee members learned about the continuum of community mental health services for children and adults, as well as some of the challenges providers face.

On November 28th, the full committee heard presentations on the following items.

- ?? Board of Visitors review of Montana State Hospital and preliminary agency response
- ?? Primer on mental health services administered by DPHHS
- ?? Oversight topics
 - o A letter to Senator Cobb from Greg Petesch regarding the requirement to competitively bid general fund grants authorized in House Bill 2 for services to prevent out of home placement of children eligible for the Mental Health Services Plan (MHSP) and restrictions placed on the House Bill 2 appropriation, including the DPHHS statutory exemption from competitive procurement if it is purchasing services
 - o An interpretation about the way that \$480,000 of general fund for children's services in HB 2 can be spent
 - o DPHHS budget status and proposed mental health services reductions

DPHHS EXEMPT FROM COMPETITIVE PROCUREMENT OF SERVICES

At the September HJR 1 meeting, Senator Cobb asked if DPHHS was going to follow a competitive bid process to award the \$480,000 in general fund appropriated in HB 2 for multi

service provider coalitions to prevent out of home placement of children eligible for the Mental Health Services Plan. While DPHHS had not decided whether or not it would award funds competitively, Greg Petesch, Director of Legal Services for the Legislative Services Division, concluded that statute excludes DPHHS from competitive processes for procurement of services. However, Mr. Petesch also concluded that if federal Medicaid funds will be used to support services established by the general fund grants, federal procurement statutes would most likely apply and that the services must meet other federal Medicaid program criteria in order to be eligible for reimbursement (e.g. freedom of choice among providers and provision of services statewide). If services developed or procured through the general fund grants were limited to certain providers or to certain locations, DPHHS would need to obtain a waiver of federal Medicaid criteria to use Medicaid funding to pay for eligible children placed in such services.

DPHHS BUDGET STATUS –GENERAL FUND SHORTFALL AND POTENTIAL REDUCTIONS

The October DPHHS budget status report shows a \$4.4 million general fund deficit. Attachment 1 shows an agency wide summary by division. The report is based on October data for most expenditures and November data for Medicaid costs. The most recent report shows a slight improvement over the previous report (about \$0.1 million general fund).

The most significant shortfall shown in the October report is in the Health Policy and Services Division, which is short \$3.4 million general fund in primary care Medicaid Services. The largest projected general fund surplus (\$1.8 million) is in Senior and Long-Term Care Division.

The executive is evaluating a list of potential changes to offset the projected shortfall (see Attachment 2). The Governor has not made any decisions about which of the proposals might be implemented; however, some of the mental health service proposals, such as changes in documentation for placement in high cost children's services, were adopted November 1. It is also possible that other alternatives may be identified and implemented instead of those listed in the draft document.

Attachment 2 shows three potential scenarios to address the shortfall. The first two scenarios list a series of individual actions and the third scenario includes a single action to reduce payment rates for services administered by the two divisions with the highest cost over runs (Health Policy Services and Addictive and Mental Disorders) by a certain percentage. The top left hand corner of each the sheet lists the scenario.

Potential Shortfall in Child Support Enforcement not Included

A recently discovered \$2 million shortfall in state special revenue matching funds for Child Support Enforcement Division (CSED) is not included in the October budget status report. Together with the federal match, CSED is estimated to be about \$6 million short each year of the biennium, compared to a total annual appropriation of \$10 million. Legislative staff requested

that DPHHS explain how the shortfall in CSED will be addressed, since 70 percent of the CSED appropriation funds personal services.

Major Reasons for Projected Deficits and Surpluses by Division

Human and Community Services – projected \$0.6 million general fund deficit in Temporary Assistance for Needy Families (TANF) Maintenance of Effort (MOE) requirements

- ?? Unclear why DPHHS is projecting a deficit in MOE since the legislature appropriated sufficient general fund for the full MOE
- ?? Data to fully analyze MOE expenditures not yet available and division making adjustments to assure that MOE requirement is met
- ?? MOE appropriated in a number of divisions; changes in spending patterns of other divisions and shifts in cost allocation impact MOE
- ?? General fund budgeted for children's basic mental health services in the Addictive and Mental Disorders Division (AMDD) must be fully expended or state is short MOE

Child and Family Services - projected deficit of \$0.5 million general fund

- ?? \$0.3 million deficit estimated in foster care and subsidized adoption

Director's Office – projected deficit of \$0.7 million general fund

- ?? Change in accounting policy for accrued vacation and sick leave causes shortfall
- ?? Agency wide total recorded in Director's Office and will be distributed to other programs

Child Support Enforcement – projected within budget (refer to discussion of other budget status issues on page 4)

Health Policy and Services – projected net deficit of \$3.1 million general fund

- ?? Medicaid service costs over run is \$3.4 million general fund
- ?? Deficit is in primary care Medicaid services (hospital, physician and prescription drug services)
- ?? Increased number of persons eligible – especially in the aged, blind, disabled category (most expensive eligibility groups)
- ?? Higher utilization of hospital services

Operations and Technology - projected within budget

Disability Services – projected shortfall of \$0.1 million general fund

- ?? Primary shortfall in vocational rehabilitation benefits, offsetting excesses/shortfalls exist within components of the Developmental Disabilities Program

Senior and Long-Term Care – projected surplus of \$1.8 million general fund

- ?? Primary reason is nursing home bed days are lower than projected during session by about 3 percent
- ?? Also some lower utilization in community services, but not as significant

Addictive and Mental Disorders – projected net deficit of \$1.1 million general fund

- ?? Total Medicaid cost over run is \$1.7 million general fund; net \$1.1 million deficit includes unexpended balances of restricted appropriations
- ?? Primary cost over run in children's Medicaid services, although state hospital also remains between 10 to 15 persons above the budgeted average daily population
- ?? Fewer children and more adults eligible for Mental Health Services Plan compared to session estimates
- ?? Actions to reduce expenditures – some implemented, some planned, and other potential reductions if costs continue to increase
- ?? Legislative staff have concerns about cost shifts from Medicaid services funded at 30 percent general fund to 100 percent general fund in foster care primarily and also in juvenile corrections (expanded discussion later in report)

Other Budget Status Issues

In addition to the deficit spending projected in the budget status report a number of other issues regarding the budget status of the DPHHS exist. The other issues related to the department budget status are listed by division.

Child and Family Services

- ?? Issue to watch – potential general fund cost increase due to potential changes in children's Medicaid funded mental health services administered by AMDD (see discussion on pages 5 and 6)
- ?? Issue to watch - Washington state Supreme Court ruled that foster child's social security payment cannot be used to offset cost of care; may be appealed to United States Supreme Court
 - o Majority of \$1.1 million in third party contributions (which offset cost of care) is from social security payments
 - o If child's social security income is placed in savings, the child's resources may exceed the resource limit for federal IV-E and Medicaid eligibility, shifting costs from 30 percent to 100 percent general fund

Child Support Enforcement – DPHHS budget status report does not include a potential annual deficit of \$6 million total funds or about 60 percent of the total division appropriation

- ?? The Child Support Performance and Incentive Act of 1998 changed how child support enforcement incentive funds are awarded to states. DPHHS estimated the 2003 biennium incentive funds based upon the new federal regulation. DPHHS recently received notification of the incentive funds earned for federal fiscal 2000 and documentation supporting the calculation. Receipt of this information led to revision of the estimates of federal incentive fund awards for fiscal 2001 through 2003.
- ?? Incentive funds from the federal government are deposited into a state special revenue account and used to match federal funds on 34 percent state/66 percent federal matching ratio

- ?? Annual shortfall for the 2003 biennium, including federal matching funds, is estimated at \$6.0 million
- ?? Annual shortfalls for fiscal 2000 and 2001 are estimated at \$1.0 and \$1.5 million, respectively
- ?? Total funding shortfall, including federal matching funds, is projected to be \$7.5 million for 2001 biennium and \$12 million for 2003 biennium
- ?? If program is not significantly curtailed major issue regarding source of state match to continue program; options include general fund and/or fees charged to those using the service

Disability Services – developmental disabilities services refinancing and service expansion

- ?? Current institutional population is 90 at Montana Development Center and 32 at Eastmont; HB 2 language directs the department refinance services to move individuals to community settings and increase support for existing community services
- ?? In a supplemental situation, if general fund can be made available through refinancing developmental disabilities services those funds must be used to offset the department deficit before services are expanded.
 - 17-8-103 (1) MCA - unlawful for a department to expend in excess of legislative appropriations
 - 17-2-108 (1) MCA - expenditures shall be applied against any appropriated nongeneral fund money whenever possible before using general fund appropriations
 - HB 2 requires that the Developmental Disabilities Program report to the Legislative Fiscal Division semiannually in January and June on refinancing efforts. This report is to include the amount of general fund that was made available through refinancing efforts. The first report is due in January 2002.

POTENTIAL BUDGET REDUCTIONS

The executive branch is reviewing potential measures to reduce the Medicaid cost over runs. A list of actions that AMDD will take to reduce the shortfall in mental health services as well as potential cuts that may be considered if deficits continue has been published for some time. Legislative staff received the list of other program reductions December 5, so the issues identified for committee consideration are more fully developed for proposed changes in Medicaid mental health services than issues identified in other programs. Attachment 2 lists the potential reductions being considered by the executive. Some of the changes published by AMDD were implemented November 1.

Potential Mental Health Services Changes

Potential changes in Medicaid funding for children's mental health services may cause general fund expenditure increases in child welfare and juvenile corrections systems. Cost shifts would

result if treatment costs for children shifted from Medicaid funding (30 percent general fund) fully to the general fund.

- ?? Children in the child welfare and juvenile corrections systems are in the custody of the state. These service delivery systems have obligations on behalf of children that exist whether or not Medicaid funding supports services for children.
- ?? Very few nongeneral fund funding sources for treatment services exist besides the Medicaid program. Thus, the predominant funding source for treatment services other than Medicaid is general fund.
- ?? Providers in systems other than the Medicaid system are not obligated to accept the Medicaid reimbursement rate. Therefore the cost for services in non Medicaid service delivery systems is likely to be greater than the cost of services in the Medicaid system.

More specifically, the following are examples of the types of impacts that may be experienced as potential mental health service reductions are implemented.

- ?? Stricter documentation standards for medical necessity may mean that some children who previously met medical necessity criteria for Medicaid reimbursement will no longer meet these criteria. Without Medicaid reimbursement another source of funding would be needed. While some of these children may be appropriately served in other Medicaid funded services, there may be a group of children that are not appropriate for such levels of care and who do not meet medical necessity criteria for the higher level of care. The cost to treat children who remain in placements that no longer qualify for Medicaid reimbursement will shift to the general fund.
- ?? Waiting lists for residential treatment services may force systems other than the mental health system to seek treatment alternatives, including out of state placements. Other children's systems will be faced with the challenge of maintaining these children while they wait for services.
- ?? If more than four children in the custody of DPHHS are placed out of state and are ineligible for Medicaid funding due to these changes, the general fund cost to Child and Family Services Division in fiscal 2002 will exceed the estimated savings for AMDD.
- ?? Restricting payment for out of state placements may help foster development of new and additional services in state.
- ?? Reduction or elimination of outpatient therapies for children and adults may have several impacts.
 - More children and adults may seek the determination that they are SED or SMI so that they may access services.
 - The child welfare and juvenile corrections systems may purchase a large volume of outpatient therapy services in an effort to maintain children in the least restrictive setting possible.
 - Low-income families may not be able to access or pay for necessary outpatient therapies, which may be the key to the family maintaining employment. If families are unable to maintain employment they may return to the cash assistance program.
 - Families that have exhausted all other avenues to access mental health services for their children may seek state custody for their children so services can be accessed through the child welfare or juvenile corrections system. The Health and Human Services Joint Appropriation Subcommittee heard testimony from

parents who planned to or had pursued such actions to access treatment for their children.

Other Potential Changes Under Consideration by the Executive

Other reductions listed in Appendix 2 include:

- ?? Provider rate increase delays in mental health services (already implemented)
- ?? Provider rate reductions in excess of rate increases granted by the last legislature for some providers and services
- ?? Increase co-payments by Medicaid recipients (which can have the effect of reducing provider income when providers must render services even if recipient cannot pay the co-payment)
- ?? Reduce operating costs by restricting travel and other expenditures

POTENTIAL ALTERNATIVES TO SOME OR ALL REDUCTIONS

There are two other potential general fund offsets that could reduce the need for service reductions: economic stimulus legislation before Congress and general fund freed up in developmental disabilities services due to refinancing 100 percent general fund expenditures with Medicaid (30 percent general fund).

At least one of the several economic stimulus bills before Congress includes a provision to increase the federal Medicaid match rate. Each 1 percent increase in the federal match rate reduces general fund Medicaid service costs by more than \$4 million. If the enacted federal legislation contains such a provision, it could obviate the need for budget reductions this fiscal year depending on the amount and effective date of the enhanced match rate.

State statutes require that any general fund “freed up” in disability services by shifting 100 percent general fund expenditures to Medicaid funding, which is 30 percent federal funds, be used to offset general fund cost over runs in other programs (see page 5). Legislative staff has requested that the executive tell the committee whether it will apply such general fund to the cost over run in other programs. Such an action would reduce the need for reductions in other programs depending on the level of general fund saved in Disabilities Services Division.